

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	Case No. CR 98-0339-RMT
)	CV 04-6759-RMT
Plaintiff,)	
)	ORDER DENYING MOTION BY
vs.)	DEFENDANT FOR
)	RECONSIDERATION OF
SOLOMON TEKLE,)	DENIAL OF RULE 60 (b)(4)
)	MOTION
Defendant.)	

This matter has come before the court on the motion filed October 29, 2008 by defendant Solomon Tekle for reconsideration of this court's order filed October 9, 2008 denying defendant's previously filed Rule 60(b)(4) motion. By this motion, defendant explains that the court erroneously construed his 60(b)(4) motion as a second or successive section 2255 motion and failed to properly consider his motion.

In his 60(b)(4) motion defendant contended that his section 2255 motion should be reopened because this court erred in failing to properly address defendant's ineffective assistance of appellate counsel claims. Defendant then proceeded to reargue the claims that his appellate counsel failed to raise his Apprendi and double jeopardy claims. Because those claims were addressed in this court's denial of defendant's section 2255 motion, reopening was not warranted and rearguing his

1 claims was tantamount to a second or successive section 2255 motion.

2 Defendant is advised that because the offenses that were interrelated
3 were grouped together in calculating offense level for purposes of computing
4 defendant's sentence, there was no double jeopardy problem. Moreover, pursuant
5 to 18 U.S.C. § 3013, defendant was subject to a mandatory special assessment of
6 \$1,300 (\$100 per count for counts 3 through 15), which excludes an assessment for
7 the conspiracy count and, therefore, raises no double jeopardy problem.¹


8 Defendant is further advised that with respect to his Apprendi claim,
9 pursuant to 21 U.S.C. § 960(b)(3), the maximum sentence defendant could have
10 gotten for attempting to import an unspecified amount of heroin was twenty years for
11 each of counts six and eight. Therefore, the 360-month sentence imposed was not
12 greater than the 40-year maximum sentence defendant was facing.

13 As such, reconsideration is not warranted.

14 Accordingly,

15 IT IS ORDERED that the motion by defendant Solomon Tekle for
16 reconsideration of this court's order filed October 9, 2008 is respectfully denied.

17 Dated: November 25, 2008

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20 ROBERT M. TAKASUGI
21 United States District Sr. Judge
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28 ¹ According to the Judgment and Commitment Order, defendant was only
assessed \$1030, rather than the mandatory \$1300.